

SUMMARY REPORT OF INVESTIGATION
Office of Inspector General Case # 15-0564
(Sergeant Stephen Franko)
August 10, 2016

This report consists of a summary of the evidence set out in the attached investigative materials and the Office of Inspector General's (OIG's) analysis of that evidence. An index of the investigative materials is attached.

I. INTRODUCTION

An OIG investigation established that Stephen Franko, a Chicago Police Department (CPD) Sergeant who supervised officers involved in the events that culminated in Officer Jason Van Dyke's October 20, 2014 shooting of Laquan McDonald, violated CPD Rules and Regulations and CPD Directives when he reviewed and approved false Tactical Response Reports (TRRs) and false Officer's Battery Reports (OBRs) submitted by Officers Van Dyke and Joseph Walsh following the shooting. In addition, Franko approved an Original Case Incident Report that inaccurately stated Van Dyke was injured by McDonald. Finally, Franko failed to take appropriate action when he became aware that the officers under his supervision did not capture audio in their vehicles' in-car video systems. Franko, as a CPD supervisory member, was accountable for the actions of his subordinates, and his failure to correct crucial reports submitted in response to a police-involved shooting and to take appropriate action when deficiencies in the in-car video system were observed brought discredit to the Department. Accordingly, OIG recommends that CPD discharge Franko and refer him for placement on the ineligible for rehire list maintained by the Department of Human Resources.

II. APPLICABLE RULES, REGULATIONS, AND LAW

A. CPD Rules and Regulations

The "Rules and Regulations of the Chicago Police Department" set out the standards of conduct and duties of sworn members, including supervisory members, as well as CPD goals. The Rules and Regulations state that sworn members must "conduct themselves at all times in such a manner as will reflect credit upon the Department with emphasis on personal integrity and professional devotion to law enforcement." Supervisory members "have the responsibility for the performance of all subordinates placed under them" and they "[r]emain accountable for the failure, misconduct or omission by their subordinates."

Article V of the CPD Rules and Regulations, entitled CPD Rules of Conduct (the CPD Rules), sets forth specifically prohibited acts. In pertinent part, the CPD Rules include the following prohibitions:

Rule 2 Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

- Rule 3** Any failure to promote the Department's efforts to implement its policy or accomplish its goals.
- Rule 6** Disobedience of an order or directive, whether written or oral.
- Rule 11** Incompetency or inefficiency in the performance of duty.
- Rule 14** Making a false report, written or oral.

B. CPD General Order G03-02-05 (effective October 1, 2002 through October 29, 2014)

CPD General Orders “are directives that establish critical policies directly related to the core values and functions of the Department or the broad organizational policies and key practices relating to those core values.” General Order G03-02-05 “identifies incidents which will require the completion of a Tactical Response Report.”¹ It states that a TRR is used to document, among other things, all incidents “involving the discharge . . . of a firearm,” or “which involve a subject fitting the definition of an assailant whose actions are directed against a Department member.” Section III.B. states that supervisors who have been notified of the incident will “review the member’s TRR for legibility and completeness and indicate approval of such by signing the appropriate box.” It also notes: “The TRR will not substitute for an Officer’s Battery Report. Whenever a member is the victim of a murder or any type of a battery or an assault, whether such charges are placed against an offender or not, the supervisor will complete an Officer’s Battery Report.”

C. CPD Special Order S03-02-01 (effective October 1, 2002 through October 29, 2014)

CPD Special Orders are directives that establish protocols and procedures concerning specific CPD functions, operations, programs, or processes. Special Order S03-02-01 outlines CPD “investigative and reporting procedures in firearm discharge incidents.”² Section V listing the “Assigned Sergeant’s Responsibilities” states that the assigned sergeant must ensure that “an officer other than the involved member has been assigned to conduct the preliminary investigation, prepare the original case incident report, and relay additional information to investigating units.” The assigned sergeant must also prepare an OBR and complete the supervisor’s section of the TRR.

D. CPD Special Order S03-03-06 (effective January 5, 2014)

Special Order S03-03-06 outlines the responsibilities and duties of field sergeants assigned to district law enforcement. Section II of the Special Order provides that district law enforcement

¹ OIG 15-0564 004065-67.

² OIG 15-0564 004071-79.

field sergeants are responsible for “guiding and directing their subordinates, ensuring the achievement of basic and directed patrol on matters affecting their duties and responsibilities” and for “monitoring behavior and performance of subordinates and their adherence to Department policies and procedures and taking appropriate action when deficiencies in performance, uniform, and/or equipment are observed.” Section III provides that one of the district field sergeant’s basic duties is to “monitor subordinates to ensure the in-car video system is used properly, including . . . verifying that the in-car video systems, including microphones, are operational and subordinates are logged into the system . . . [and] initiating an investigation when notified of damaged, missing, or lost equipment.” Another basic duty is to “review and, if appropriate, approve all case reports generated by members under their supervision before the conclusion of their tour of duty.” Finally, Section IV provides that one of the district field sergeant’s situational duties is to “direct and supervise the investigation” for “events requiring the completion and approval of Tactical Response Reports (TRRs).” It states that field sergeants “will ensure TRRs are properly completed and forwarded for approval . . .”

E. CPD Special Order S03-05 (effective February 23, 2012 through February 24, 2016)

Special Order S03-05 outlines the protocols CPD members are to follow regarding in-car video systems.³ Section VI of the Special Order provides that “[t]he sergeant assigned to supervise Department members using Department vehicles equipped with an in-car video system” is to:

- (1) monitor subordinates to ensure the in-car video system is used and that digitally recorded data is properly downloaded.
- (2) ensure that the Help Desk is contacted and a ticket number is obtained whenever any member is unable to use the in-car video system or download digitally recorded data due to technical problems.
- (3) initiate an investigation when notified of a missing or lost remote transmitter/audio recorder.
- (4) document on the Supervisor’s Management Log . . . whether each vehicle has an in-car video system and if it is functioning.
-
- (6) obtain a complaint register number and order an evidence technician to process the equipment if any damage or malfunction is suspected to have been caused by deliberate (tampering) means.

³ OIG 15-0564 003934-42. The in-car video systems are also referred to as dash cameras or dashcams in this report.

III. SERGEANT FRANKO'S EMPLOYMENT HISTORY

Franko has been a CPD member since January 18, 1994. Franko was a detective before he became a Sergeant on March 16, 2006. Franko is a member of the Policeman's Benevolent & Protective Association of Illinois, Unit 156-Sergeants (Unit 156-Sergeants).

IV. SUMMARY OF INVESTIGATION

A. Procedural History of OIG's Investigation

By letter, dated December 8, 2015, IPRA Acting Chief Administrator Sharon Fairley requested that OIG conduct an administrative investigation "to determine whether certain police officers/witnesses made false statements on official reports prepared in connection with [Van Dyke's shooting of McDonald] and/or during the investigation of the incident."⁴ IPRA further requested that OIG investigate "whether any of the involved Chicago Police officers committed any other violation(s) of Chicago Police Department rules, policies or procedures in their involvement with the incident, including, but not limited to, whether any officers' conduct may have interfered with or obstructed the appropriate investigation and handling of this matter."

Then, by letter, dated January 13, 2016, CPD Interim Superintendent John J. Escalante requested that OIG conduct an "administrative investigation into any and all allegations of police officer misconduct" arising out of the October 20, 2014 shooting death of McDonald. The Superintendent's request asked OIG to investigate the following allegations: "whether any officer(s) made false statements on official reports submitted in connection with the shooting of Laquan McDonald on October 20, 2014; whether any officer(s) obstructed or interfered with the investigation of this incident, either individually or in collusion with others; and whether any officer(s) committed any violation of Chicago Police Department rules, policies, or orders in connection with their response and/or handling of this matter." Escalante attached to the letter request a copy of Sergeant Sandra Soria's Initiation Report, which raises allegations of misconduct related to the in-car video systems of the vehicles that were present during the McDonald shooting, and identified that Report as a basis for OIG's administrative investigation.

On March 10, 2016, Kevin Kilmer (Star # 7518), Financial Secretary for the FOP, filed a grievance with CPD on behalf of all affected members stating that OIG's attempts to conduct CPD officer interviews violated Article 6 of CPD's Collective Bargaining Agreement (CBA) with the FOP.⁵ On March 16, 2016, FOP on behalf of all impacted CPD officers filed a

⁴ On November 24, 2015, the Cook County State's Attorney charged Van Dyke with a single count of first degree murder in the shooting of McDonald. On December 15, 2015, it subsequently charged him with six counts of murder. OIG has not been involved with any criminal investigation related to the shooting and makes no findings regarding Van Dyke's use of force.

⁵ Section 6.1, Paragraph I of the CBA states, "If the allegation under investigation indicates a recommendation for separation is probable against the Officer, the Officer will be given the statutory administrative proceeding rights, or if the allegation indicates criminal prosecution is probable against the Officer, the Officer will be given the constitutional rights concerning self-incrimination prior to the commencement of interrogation." CPD General Order GO8-01-01, Paragraph K contains similar language.

“Complaint for Injunction in Aid of Arbitration” in the Circuit Court of Cook County asking the court to enjoin OIG from conducting interviews until the grievance was decided in arbitration.⁶ The court dismissed the complaint and denied the injunction on March 22, 2016.

OIG’s administrative investigation of other CPD employees’ actions related to CPD’s handling of the McDonald shooting is ongoing. During the course of its investigation, OIG has gathered documents from CPD and IPRA, among other sources, and conducted numerous interviews, including interviews of CPD personnel who were at or responded to the scene of the shooting and civilian witnesses to the shooting. To date in its ongoing investigation, OIG has recommended disciplinary action against multiple CPD personnel.

B. The Events of October 20, 2014

The following sections detail Van Dyke’s shooting of McDonald, as well as the relevant events that occurred directly before and after the shooting.⁷

1. [REDACTED] and Rudy Barillas’s Encounter with McDonald⁸

[REDACTED] and [REDACTED] Rudy Barillas, were parking a truck in a lot at 41st Street and Kildare Avenue when [REDACTED] saw a black male, whom she subsequently identified as McDonald, attempting to steal property from certain vehicles parked in the lot. Barillas told McDonald to leave the lot. McDonald responded by making growling noises. After Barillas again told McDonald to leave the lot, McDonald pulled out a knife and swung it at Barillas. Barillas, who had already called 911, then threw his cell phone at McDonald.⁹ McDonald ran from the lot, first northbound on Kildare and then eastbound on 40th Street.

⁶ *Fraternal Order of Police, Chicago Lodge 7 v. City of Chicago*, No. 2016 CH 03726 (Cir. Ct. of Cook County, Ill., Mar. 16, 2016).

⁷ On April 22, 2016, OIG obtained maps of the locations that are relevant to the shooting from Google Maps and included those maps in Appendix A. Those maps generally reflect the street layout and location of relevant businesses as they were on the night of October 20, 2014.

⁸ The following account of [REDACTED] and Barillas’s encounter with McDonald is taken from the March 16, 2015 case supplementary report (CSR) submitted by CPD Detective David March, which includes the statements that [REDACTED] and Barillas provided to CPD on October 21, 2014, and October 22, 2014, respectively. OIG 15-0564 003077.

⁹ OEMC recordings reflect that Barillas called 911 at 9:45 p.m. stating that he was holding “a guy right hear [sic] that stolen [sic] the radios” from trucks in a truck yard located at “41st and Kildare.” OIG 15-0564 003227.

2. Officers Thomas Gaffney and Joseph McElligott's Encounter with McDonald¹⁰

Officer Thomas Gaffney and his partner Officer Joseph McElligott received a call over the radio that someone had broken into a truck at 4100 South Kildare and were dispatched to the scene.¹¹ Gaffney was driving and McElligott was in the passenger seat of their assigned vehicle, 815R.¹² When they arrived at 4100 South Kildare, they saw a Hispanic male and female standing by the gate to the truck yard. The two said that a black male wearing a black shirt, later determined to be McDonald, had been trying to steal the radio out of a semi-truck, and had subsequently headed north toward 40th Street.

Gaffney and McElligott drove north on Kildare, turned right onto 40th Street, and saw McDonald walking east on the south side of 40th Street. McElligott exited the vehicle and commanded McDonald to stop and turn around. Gaffney stayed in the vehicle in case McDonald attempted to flee. McElligott ordered McDonald to take his hands out of his pockets. McDonald, who had been facing McElligott, turned and walked away with one hand still in his pocket. McDonald then turned again and took both of his hands out of his pockets. He had a knife in his right hand. McElligott drew his weapon and told McDonald to drop the knife. McDonald started walking east again, going from the sidewalk to the street and back. McElligott followed McDonald on foot, shining his flashlight on him, while Gaffney followed in 815R, parallel to McDonald.

¹⁰ The following account of Gaffney and McElligott's encounter with McDonald is taken from (1) the audio-recorded statements Gaffney and McElligott provided to IPRA on October 21, 2014; and (2) the March 16, 2015 CSR submitted by Detective David March, which includes the statements that Gaffney and McElligott provided to March on the night of the McDonald shooting. OIG 15-0564 000482-98, 000610-30, 003067-69.

¹¹ OEMC records reflect that Gaffney and McElligott received the call at 9:47 p.m. OIG 15-0564 003691.

¹² Below is a chart identifying the beat numbers and vehicle numbers of the CPD vehicles that were present when McDonald was shot, along with the names of the officers who were assigned to those vehicles. This SRI refers to the below-referenced vehicles by beat number, unless otherwise specified.

Beat #	Vehicle #	Officers
845R	6412	Officer Walsh (driver), Officer Van Dyke (passenger)
815R	8489	Officer Gaffney (driver), Officer McElligott (passenger and on foot)
813R	8779	Officer Janet Mondragon (driver), Officer Daphne Sebastian (passenger)
822	8765	Officer Arturo Becerra (driver), Officer Leticia Velez (passenger)
841R	8948	Officer Ricardo Viramontes (driver), Officer Dora Fontaine (passenger)

As McDonald approached the intersection of 40th and Keeler, Gaffney reported to dispatch that McDonald was walking away with a knife in his hand.¹³ Gaffney and McElligott continued to follow McDonald as he headed east, with McElligott giving McDonald orders to drop his knife and stop. McDonald kept turning around and giving the officers a “weird glaze[d] look.” Gaffney IPRA Tr. 11:20.¹⁴

As McDonald approached the intersection of 40th and Karlov, Gaffney turned his car toward McDonald to direct him down Karlov. Gaffney wanted to keep McDonald away from Pulaski, which was a more populated area. McDonald then swung his arm and popped 815R’s right front tire with his knife. McElligott was toward the back of 815R when McDonald popped its tire. After McDonald took a step back from the vehicle, Gaffney pulled up further in front of him to stop him from proceeding to Pulaski. McDonald then hit the right side of 815R’s windshield once with the knife in his right hand. The windshield did not break but, according to Gaffney, McDonald hit it as hard as he could. McDonald walked around the front of 815R and continued eastward on 40th Street. After McDonald had walked 10 to 15 feet, another squad car turned off of Pulaski onto 40th Street with its lights on, and McDonald began to sprint. McElligott followed McDonald on foot, and Gaffney followed McDonald in 815R. McDonald ran eastbound through a parking lot of a Burger King located at 40th and Pulaski and then headed southbound on Pulaski. Video footage from several cameras captured McDonald’s movements as he reached Pulaski.

3. Summary of the Relevant Video Footage

The below table contains a summary of the relevant video footage of the McDonald shooting, which includes the dashcam videos from 813R, 823R, and 845R, video from the “WNE fire exit” security camera from the Greater Chicago Food Depository, which is bordered by 40th Street to the north, Karlov Avenue to the east, and Keeler Avenue to the west, and the security camera video from the Dunkin’ Donuts, located at 4113 South Pulaski Road (the DD Camera).¹⁵

Time	Event(s) Captured	Source of Video
9:53:17 – 9:54:42	McDonald walks eastbound on the south side sidewalk of 40th Street; a CPD SUV travels east on 40th Street, parallel to McDonald with its front bumper even with McDonald; an officer on foot trails directly behind	Greater Chicago Food Depository Security Camera

¹³ OEMC recordings reflect that, at 9:53 p.m., 815R reported: “We’re at 40th and Keeler. This guy uh is walking away from us and he’s got a knife in his hand.” Approximately 30 seconds later, a dispatcher stated, “815R looking for a taser.” See OEMC Documents and CDs; *see also* OIG 15-0564 003691, 3228.

¹⁴ OIG 15-0564 000620.

¹⁵ In addition to the videos cited in the summary, OIG obtained video footage from the security camera videos at Burger King and Focal Point, and the dash camera videos from Vehicles 821R and 815R. These videos do not contain footage relevant to this report.

	McDonald by the length of the SUV, with his flashlight trained on McDonald. ¹⁶	
9:56:53 – 9:57:01	813R and 845R turn left onto 40th Street from Pulaski.	813R Dashcam
9:57:01 – 9:57:09	An unidentified person on 40th Street points the CPD vehicles toward the Burger King parking lot (813R); 845R turns into the parking lot (813R). McDonald runs southeast through the Burger King parking lot out onto Pulaski (845R).	813R Dashcam; 845R Dashcam
9:57:09 – 9:57:20	845R drives over the curb and sidewalk north of Burger King and heads south on Pulaski (845R); 813R turns around, turns right onto 40th Street, and then right again on Pulaski (813R); McDonald runs southbound in the middle of Pulaski and enters the intersection of 41st Street and Pulaski (813R).	813R Dashcam; 845R Dashcam
9:57:20 – 9:57:25	845R, which is facing east/southeast on Pulaski just north of 41st street, turns right behind McDonald and proceeds south on Pulaski on the east side of the street; 845R's passenger door briefly opens and then closes as it passes McDonald on his left; McDonald continues southbound on Pulaski, toward 822, which is stopped in the middle of Pulaski facing north.	813R Dashcam
9:57:25 – 9:57:28	McDonald slows as he approaches 822, touches his hands to his waist, and then, before Walsh and Van Dyke exit 845R and with 822 situated between McDonald and the officers, McDonald extends his right arm fully to his right—the video shows that he has a silver object in his right hand; 845R passes 822 and comes to a stop on the east side of Pulaski, facing south and almost directly south of 822; Van Dyke opens 845R's passenger door.	813R Dashcam
9:57:28 – 9:57:30	McDonald changes course and begins walking southwest on Pulaski, away from 822 and 845R (813R); Van Dyke	813R Dashcam; DD Camera ¹⁷

¹⁶ OIG confirmed the vehicle is 815R and the officer on foot is McElligott by comparing the video with photographs of the officers. OIG 15-0564 003356.

¹⁷ The DD Camera video does not display an embedded timestamp. Therefore, OIG used the timestamp of 813R's video, which generally captured the same events as the DD Camera from a different angle, to establish the timeframe of the events captured by the DD Camera.

	exits the passenger side of 845R with both of his feet in Pulaski's northbound left turn lane, his gun drawn and pointed at McDonald (813R). Walsh exits the driver side of 845R, just east of Pulaski's northbound left turn lane, with his gun drawn, and moves north along the driver side of 845R until he is several feet north of 845R (DD Camera).	
9:57:30 – 9:57:33	McDonald continues to walk southwest, from the middle of Pulaski to the lane markers that divide the west side of the road (or approximately one lane west of where McDonald was prior to changing course) (813R). While McDonald walks southwest, Walsh begins moving sideways in a west/southwest direction, approximately parallel to McDonald, and crosses over the east side of Pulaski's northbound left-turn lane—his gun is pointed at McDonald (813R; DD Camera). Van Dyke takes approximately two steps northwest toward McDonald, with his left foot crossing into Pulaski's yellow-painted median strip—his gun is pointed at McDonald (813R; DD Camera). 822 drives north on Pulaski, away from 845R (813R). 841R drives north in the middle of Pulaski, toward 845R and stops just south of 845R, facing north (813R; DD Camera).	813R Dashcam; DD Camera
9:57:33 – 9:57:36	As McDonald approaches the lane markers on the west side of Pulaski, walking in a southwest direction, he looks to his right and moves his right hand behind his waist, near the right side of his lower back, then brings his hand back to his right side (813R). As McDonald crosses the lane markers on the west side of Pulaski, he looks to his left, and takes a step southbound (813R). Meanwhile, Walsh continues moving west/southwest with his gun pointed at McDonald, ultimately traversing almost the entire width of Pulaski's northbound left-turn lane (813R; DD Camera). Van Dyke takes an additional step west, toward McDonald, putting both of his feet in Pulaski's median strip and placing himself almost directly between McDonald and Walsh (813R; DD Camera). McDonald is then apparently shot, and Walsh stops moving and adopts a stance, with his feet more than a shoulder's width apart (813R; DD Camera).	813R Dashcam; DD Camera
9:57:36 –	McDonald spins between 180 and 270 degrees in a	813R Dashcam;

9:57:54	clockwise direction and then falls to the ground with the top of his head pointing south on Pulaski, approximately one street lane east of Van Dyke and just south of Van Dyke (813R). As McDonald falls to the ground, Van Dyke takes another step west toward McDonald, moving his right foot from Pulaski's median strip into the south-bound side of Pulaski—his gun remains pointed at McDonald (813R). Van Dyke subsequently takes an additional step or two south, toward McDonald (DD Camera). Other than those steps, Van Dyke's feet are stationary (DD Camera). After McDonald is on the ground, his legs and feet do not move (813R). McDonald's upper body makes small, intermittent movements as what appear to be puffs of smoke rise from McDonald's body (813R). ¹⁸	DD Camera
9:57:54 – 9:58:05	An officer approaches McDonald and kicks the knife from his hand. McDonald does not make any noticeable movements.	813R Dashcam
9:58:05 – 9:58:20	McDonald lies on the ground; no aid is rendered by CPD personnel. 823R, travelling northbound, pulls up on the west side of Pulaski, and stops just south of where McDonald is lying.	813R Dashcam; 823R Dashcam
9:58:20 – 9:58:57	Several CPD officers walk and stand near McDonald as he lies on the ground; no aid is rendered by CPD personnel.	813R Dashcam; ¹⁹ 823R Dashcam
9:58:57 – 9:59:02	823R begins making a U-turn on Pulaski. A Cook County Sheriff's Police Department (CCSPD) officer puts on blue gloves and walks toward McDonald. ²⁰ McDonald is no longer visible in the video frame.	823R Dashcam

¹⁸ OEMC records show that dispatch received notice to send an ambulance to the scene at 9:57:51. OIG 15-0564 003691.

¹⁹ The last time stamp visible on the 813R dashcam video is 9:58:55.

²⁰ OIG identified the CCSPD officer as Officer Adam Murphy.

4. CCSPD Officer Accounts of the October 20, 2014 McDonald Shooting²¹

While on patrol on October 20, 2014, CCSPD Officers Adam Murphy and Jeff Pasqua observed several CPD police vehicles pass by them. Both officers decided to follow the CPD vehicles. When they arrived at the scene, several CPD vehicles were already present—Pasqua estimated it was five or six. McDonald was lying on the pavement “gasping for his last breath of air.” Pasqua OIG Tr. 11:22-23. Meanwhile, the CPD officers were “standing around” and talking to each other. Murphy OIG Tr. 11:1. Murphy noted the CPD officers did not respond to him when he asked if they needed assistance. Murphy stated:

I see there’s blood all over the pavement. [McDonald] was kind of gurgling when he was sitting there. I remember his mouth was going open and closed like he was trying to gasp for air. And I looked for everybody else, and they were kind of standing there. I just started taking my gloves—my rubber gloves out to check for a pulse and to see if I could render aid.

Murphy OIG Tr. 12:18-13:2. He heard someone say an ambulance was en route.²² Both Officers Murphy and Pasqua recalled then watching McDonald take his final breaths.²³ It was “[m]aybe less than a minute before [McDonald] expired.” Murphy OIG Tr. 14:15-16. At no time did any CPD officers attempt to provide aid or comfort McDonald—Murphy stated, “That’s why I felt that I needed to go up to him.” Murphy OIG Tr. 14:11-12.

After McDonald passed away, Murphy got up from beside him and noticed the shooting officer, who he now knows to be Van Dyke, “pacing back and forth in front of his car.” Murphy OIG Tr. 15:7-8. Murphy approached him and told him to sit down and drink water. As he was speaking with Van Dyke, Murphy “heard several officers telling [Van Dyke] call your union rep, call your union rep.” Murphy OIG Tr. 15:16-17.

Murphy and Pasqua departed after approximately ten minutes on the scene when a CPD sergeant told them CPD did not need their assistance. At the time they left, there was “[a] sea of CPD” on scene. Murphy OIG Tr. 38:3; Pasqua OIG Tr. 25:7-8.

²¹ The following CCSPD Officer accounts are taken from OIG’s June 23, 2016 interview of Jeff Pasqua and its June 24, 2015 interview of Adam Murphy. Pasqua and Murphy are currently CCSPD investigators.

²² In a January 22, 2016 OIG interview, CPD Area North Commander Kevin Duffin stated CPD police officers have a duty to render aid to injured civilians per general orders. Police officers render aid by calling dispatch and requesting that an ambulance be dispatched to the scene. According to Duffin, police officers are not required or expected to provide any more assistance than this. On March 30, 2016, CPD issued General Order G03-06 which requires that the involved member(s) “request medical attention for the injured, and also offer immediate medical aid commensurate with their training, experience, and available equipment.”

²³ The Medical Examiner’s Case Report states McDonald was pronounced dead “on view” at Mount Sinai Medical Center on October 20, 2014, at 10:42 p.m. OIG 15-0564 015029.

C. Reports Concerning the McDonald Shooting

1. Tactical Response Reports (TRRs)

On October 21, 2014, at 4:41 a.m. and 5:04 a.m., respectively, Van Dyke and Walsh submitted TRRs with the R.D. Number HX475653 and an Event Number of 1429315878, regarding their October 20, 2014 encounter with McDonald.²⁴ Under the heading titled “Assailant: Assault,” each officer marked the box labeled “Imminent Threat of Battery.”²⁵ Under the heading titled “Assailant: Battery,” each officer marked the box labeled “Attack with Weapon.” Under the heading titled “Assailant: Deadly Force,” each officer marked the boxes labeled “Uses Force Likely to Cause Death or Great Bodily Harm” and “Weapon.” Van Dyke specified in the TRR that the “offender’s weapon was a knife in his hand.” Walsh specified in the TRR that McDonald was “armed with [a] knife.”

38. <input type="checkbox"/> DNA REASON FOR USE OF FORCE <input type="checkbox"/> Check all that apply	PASSIVE RESISTER		ACTIVE RESISTER		ASSAILANT:ASSAULT		ASSAILANT:BATTERY		ASSAILANT:DEADLY FORCE		
	<input type="checkbox"/> DID NOT FOLLOW VERBAL DIRECTION <input type="checkbox"/> STIFFENED (DEAD WEIGHT) <input type="checkbox"/> OTHER _____		<input type="checkbox"/> FLED <input type="checkbox"/> PULLED AWAY <input type="checkbox"/> OTHER _____		<input type="checkbox"/> IMMINENT THREAT OF BATTERY <input type="checkbox"/> OTHER _____		<input type="checkbox"/> ATTACK WITH WEAPON <input type="checkbox"/> ATTACK WITHOUT WEAPON <input type="checkbox"/> OTHER _____		<input type="checkbox"/> USES FORCE LIKELY TO CAUSE DEATH OR GREAT BODILY HARM <input type="checkbox"/> WEAPON <input type="checkbox"/> OTHER _____		
MEMBER'S RESPONSE	<input type="checkbox"/> MEMBER PRESENCE <input type="checkbox"/> VERBAL COMMANDS <input type="checkbox"/> ESCORT HOLDS <input type="checkbox"/> WRISTLOCK <input type="checkbox"/> ARMBAR <input type="checkbox"/> PRESSURE SENSITIVE AREAS <input type="checkbox"/> CONTROL INSTRUMENT <input type="checkbox"/> OC/CHEMICAL WEAPON <input type="checkbox"/> WAUTHORIZATION <input type="checkbox"/> OTHER _____		<input type="checkbox"/> OPEN HAND STRIKE <input type="checkbox"/> TAKE DOWN / EMERGENCY HANDCUFFING <input type="checkbox"/> OC CHEMICAL WEAPON <input type="checkbox"/> CANINE <input type="checkbox"/> TASER (Probe Discharge) <input type="checkbox"/> TASER (Contact Stun) <input type="checkbox"/> TASER (Laser Targeted) <input type="checkbox"/> TASER (Spark Displayed) <input type="checkbox"/> OTHER _____		<input type="checkbox"/> ELBOW STRIKE <input type="checkbox"/> CLOSED HAND STRIKE/PUNCH <input type="checkbox"/> IMPACT WEAPON (Describe in Box 40) <input type="checkbox"/> OTHER _____		<input type="checkbox"/> KNEE STRIKE <input type="checkbox"/> KICKS <input type="checkbox"/> IMPACT MUNITION (Describe in Box 40) <input type="checkbox"/> OTHER _____		<input type="checkbox"/> FIREARM <input type="checkbox"/> OTHER _____		
39. <input type="checkbox"/> DNA <input type="checkbox"/> IT	* OC/CHEMICAL WEAPON AUTHORIZED BY (NAME)				40. ADDITIONAL INFORMATION OFFENDER'S WEAPON WAS A KNIFE IN HIS HAND.						
	POSITION	STAR NO.	UNIT								

Franko electronically signed Van Dyke and Walsh’s TRRs as the “reviewing supervisor” on October 21, 2014, at 4:44 a.m. and 5:07 a.m., respectively.

2. Officer’s Battery Reports (OBR)

The OBR form states that it is to be completed when “a sworn member is the victim of a murder, aggravated battery, battery, aggravated assault, or assault while performing a police function either on-duty or off-duty.”²⁶ Van Dyke and Walsh each completed and submitted an OBR with

²⁴ OIG 15-0564 003313–14, 17–18. Gaffney also completed a TRR regarding his encounter with McDonald that is substantially similar to Van Dyke and Walsh’s TRRs. See OIG 15-0564 003321–22.

²⁵ Pursuant to the Illinois Criminal Code, a person commits battery when he or she knowingly and without legal justification “(1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual.” 720 ILL. COMP. STAT. 5/12-3. A person commits assault when he or she, without lawful authority, “knowingly engages in conduct which places another in reasonable apprehension of receiving a battery.” 720 ILL. COMP. STAT. 5/12-1.

²⁶ See also Special Order S04-13-01, issued on December 28, 2012, which outlines the procedures to be followed for the preparation of an OBR. Franko told OIG investigators that his electronic signature on the TRR indicates that he

the R.D. Number HX475653 regarding their respective October 20, 2014 encounters with McDonald.²⁷ Their OBRs are nearly identical. They all state three officers were battered. Under the heading titled “Manner of Attack,” each officer marked the box labeled “Stabbed/Cut (Including Actual Attempt).” Under the heading titled “Type of Weapon/Threat,” Van Dyke marked the boxes labeled “Knife/Other Cutting Instrument” and “Other/Specify.” Walsh only marked “Other/Specify.” Both officers specified the type of weapon/threat as a “Swinging Knife.”

NO. OF OFFICERS BATTERED	3
WERE THERE ASSISTING UNITS ON SCENE? 1. <input checked="" type="checkbox"/> YES 2. <input type="checkbox"/> NO	
IF YES HOW MANY ASSISTING OFFICERS WERE PRESENT AT TIME BATTERY (EXCLUDING YOU OR YOUR PARTNERS) ? 8	
MANNER OF ATTACK	
<input type="checkbox"/> 01. SHOT <input type="checkbox"/> 02. SHOT AT <input checked="" type="checkbox"/> 03. STABBED/CUT (INCLUDING ACTUAL ATTEMPT) <input type="checkbox"/> 04. STRUCK/BLUNT FORCE (INCLUDING ACTUAL ATTEMPT) <input type="checkbox"/> 05. OTHER (INCLUDING VERBAL THREATS)	
TYPE OF WEAPON/THREAT	
(Check all that apply):	
<input type="checkbox"/> A. FIREARM CALIBER <input type="checkbox"/> B. VEHICLE <input type="checkbox"/> C. KNIFE/OTHER CUTTING INSTRUMENT	
<input type="checkbox"/> D. HANDS/FISTS <input type="checkbox"/> E. FEET <input type="checkbox"/> F. MOUTH (SPIT, BITE, ETC.) <input type="checkbox"/> G. VERBAL THREAT (ASSAULT) <input checked="" type="checkbox"/> H. OTHER (SPECIFY) <u>SWINGING KNIFE</u>	
FIREARM USE INFORMATION	
<input type="checkbox"/> A. OFFICER AT GUNPOINT <input type="checkbox"/> B. OFFICER'S OWN WEAPON OBTAINED <input type="checkbox"/> C. ATTEMPTED TO OBTAIN OFFICER'S OWN WEAPON	

3. Original Case Incident Report

On October 21, 2014, at 4:32 a.m., Fontaine submitted an Original Case Incident Report with the R.D. Number HX475653 and an Event Number of 1429315878.²⁸ The report lists Gaffney, Van Dyke, and Walsh as the “Victims,” McDonald as the “Suspect,” and classifies the incident as “Assault – Aggravated Po: Knife/Cut Instr.” In the section titled “Injuries,” Fontaine states that Van Dyke was “Injured by offender.” Franko approved the report on October 21, 2014, at 5:18 a.m.

reviewed the accompanying OBR as well. Franko explained that OBRs are additional reports that are tied to the TRRs. *See infra* Page 18.

²⁷ OIG 15-0564 003311–12, 15–16. Gaffney also completed an OBR regarding his encounter with McDonald that is substantially similar to Van Dyke and Walsh’s OBRs. *See* OIG 15-0564 003319–20.

²⁸ OIG 15-0564 003016–19.

D. OIG Interview of Officer Joseph Walsh

On March 8, 2016, OIG investigators interviewed Walsh under oath after informing him of his administrative rights orally and in writing. He provided oral and written acknowledgement of the reading of those advisements. The interview was transcribed by a certified court reporter. Walsh's attorney, Colleen Daly, was also present for the interview. In summary, Walsh stated as follows concerning his interactions with Franko on the night of October 20, 2014, and the morning of October 21, 2014.

Franko was the sergeant "on the street" the night of October 20, 2014. Walsh OIG Tr. 24:15. When Franko first arrived to the scene, he asked Walsh if he discharged his weapon. Franko later transported Walsh and Van Dyke to Area Central. Walsh believed he consulted with Franko when completing his TRR "for the purposes of RD numbers" and "time of occurrence, things like that." Walsh OIG Tr. 89:21-24. He did not recall consulting with Franko regarding any of the other information he inputted into his TRR and OBR. Walsh informed Franko in person when he completed the forms. Walsh explained that Franko told him "when [Walsh] was done, to inform him because he was going to review [the forms]." Walsh OIG Tr. 98:17-18.

E. OIG Interview of Officer Dora Fontaine

On March 16, 2016, OIG investigators interviewed Fontaine under oath after informing her of her administrative rights orally and in writing. She provided oral and written acknowledgement of the reading of those advisements. The interview was transcribed by a certified court reporter. Fontaine's attorney, Jennifer Russell, was also present for the interview. In summary, Fontaine stated as follows concerning her interactions with Franko on the night of October 20, 2014, and the morning of October 21, 2014.

Franko was Fontaine's sergeant on the night of October 20, 2014. When Franko first arrived to the scene, he asked Fontaine and Viramontes to block traffic coming north on Pulaski and assigned them to complete the paperwork for the shooting. The paperwork included a case report that listed the basic details of the incident and the CPD personnel on scene. Fontaine informed Franko once they completed the report.

F. OIG Interview of Officer Joseph McElligott

On May 9, 2016, OIG investigators interviewed McElligott under oath after informing him of his administrative rights orally and in writing. He provided oral and written acknowledgement of the reading of those advisements. The interview was transcribed by a certified court reporter. McElligott's attorney, Jennifer Russell, was present for the interview. In summary, McElligott stated as follows concerning his interactions with Franko on the night of October 20, 2014, and the morning of October 21, 2014.

Franko was McElligott's sergeant on the night of October 20, 2014. McElligott saw Franko speaking with Van Dyke "within minutes" after the shooting. McElligott OIG Tr. 43:5. McElligott did not hear their conversation. Franko was "kind of around" when the detectives

spoke with McElligott and Gaffney on the scene. McElligott OIG Tr. 46:6. At Area Central, Franko, along with certain detectives who McElligott could not identify, told McElligott he did not need to fill out a TRR and OBR and explained: “Since you were outside and [McDonald] attacked the vehicle while [Gaffney] was in it, not you, you’re not a victim. You don’t have to fill this out.” McElligott OIG Tr. 75:23-76:1. He believed Franko instructed Van Dyke, Walsh, and Gaffney to fill out TRRs and OBRs.

G. OIG Interview of Officer Thomas Gaffney

On May 13, 2016, OIG investigators interviewed Gaffney under oath after informing him of his administrative rights orally and in writing. He provided oral and written acknowledgement of the reading of those advisements. The interview was transcribed by a certified court reporter. Gaffney’s attorney, William Fahy, was present for the interview. In summary, Gaffney stated as follows concerning his interactions with Franko on the night of October 20, 2014, and the morning of October 21, 2014.

Franko was Gaffney’s sergeant on the night of October 20, 2014. Gaffney recalled speaking to Franko on the scene about 15 to 20 minutes after the shooting occurred. He described that conversation as “[j]ust pretty much the basic telling what happened or what our timeline was from what happened to—from the time we got the job to where we ended up.” Gaffney OIG Tr. 27:3-6. At Area Central, Franko directed Gaffney to fill out a TRR and an OBR. When asked to describe that conversation, Gaffney said: “I don’t remember it in detail, but just like that we had—I had to fill it out, just like minor things that I might have asked what to put type of thing. Got temperature and stuff like that” Gaffney OIG Tr. 61:6-9. When asked why he stated in the OBR that three officers were battered, Gaffney responded that “they” informed him to “just put three because that’s how many reports were being done” Gaffney OIG Tr. 65:18-19. Gaffney then clarified that it was “probably” Franko who told him to state that three officers were battered. Gaffney OIG Tr. 65:23. Gaffney told Franko when he finished completing the forms. Gaffney added, “[M]y sergeant was still right around me when it was done.” Gaffney OIG Tr. 75:3-4.

H. OIG Interview of Deputy Chief David McNaughton

On May 25, 2016, OIG investigators interviewed McNaughton under oath after informing him of his administrative rights orally and in writing. He provided oral and written acknowledgement of the reading of those advisements. The interview was transcribed by a certified court reporter. McNaughton’s attorney, Thomas Pleines, was present for the interview. In summary, McNaughton stated as follows concerning his interactions with Franko on the night of October 20, 2014, and the morning of October 21, 2014.

When asked if he was present when Van Dyke, Walsh, or Gaffney filled out their TRRs, McNaughton stated: “I believe they were more the opposite end of the room working with their union reps and their sergeant, and I think it was, yeah, it must have been Sergeant Franko in completing it. You know, one thing we want to make sure we are consistent on the times, the locations and some of those things.” McNaughton OIG Tr. 114:2-9. Following a break in the

interview, McNaughton stated: “I really don’t know who was sitting next to who and what was happening, you know. If I made a characterization that they—those reps were standing next to them and their sergeant was conversing with them, I am just thinking that that’s possibly how this could have played out.” McNaughton OIG Tr. 116:18-24.

I. OIG’s Interviews of Sergeant Stephen Franko

1. June 13, 2016 Interview

On May 13, 2016, pursuant to Section 6.1 of the CBA between CPD and Unit 156-Sergeants, OIG, through CPD’s Bureau of Internal Affairs, served Franko with a Notification of Interview, Notification of Allegations, and copies of TRRs and OBRs. In addition, OIG provided Franko with the dashcam footage from 813R and 845R and the security camera footage from Dunkin’ Donuts.

On June 13, 2016, OIG investigators interviewed Franko under oath after informing him of his administrative advisements orally and in writing. He provided oral and written acknowledgement of the reading of those advisements. The interview was transcribed by a certified court reporter. Franko’s attorney, Thomas Pleines, was also present for the interview. In summary, Franko stated as follows.

Franko was a Sergeant in the 8th District on October 20, 2014, and was assigned as a street supervisor. Franko explained that a street supervisor is responsible for a set number of vehicles—he provides “guidance” and ensures that officers “are doing their duties correctly on the street.” Franko 6/13/16 OIG Tr. 21:24, 22:4-5.

a) Scene of the Shooting

On October 20, 2014, Franko was supervising beats 813R, 815R, and 841R, as well as several other beats. That evening, Franko heard a call over the radio stating 815R was requesting a Taser. As Franko proceeded to the scene, he heard over the radio that shots were fired. When Franko arrived to the scene, he noticed that McDonald was “in the street,” and Van Dyke and Walsh were standing next to the passenger side of their vehicle. Franko 6/13/16 OIG Tr. 30:16. Franko approached the officers and asked them if they were ok and what happened. They both responded yes, and Van Dyke stated, “He wouldn’t drop the knife.” Franko 6/13/16 OIG Tr. 31:5-6. Franko said he ensured medical attention was ordered for McDonald and then went to “secure the scene.” Franko 6/13/16 OIG Tr. 31:17. Securing the scene included taping off the area with crime scene tape, marking the shell casings on the ground, and instructing arriving officers to protect the scene. Franko also ensured “somebody was recording all of the units that were coming into the crime scene” Franko 6/13/16 OIG Tr. 32:5-7. Franko said he then “inquired once again that an ambulance had been ordered to ensure that, you know, Laquan McDonald received proper medical care.” Franko 6/13/16 OIG Tr. 32:13-16.

Franko stated this was the first police-involved shooting where “it was my scene and I was in charge of the area.” Franko 6/13/16 OIG Tr. 45:1-2. Franko relinquished control of the scene

once a superior officer responded, which was about fifteen minutes after he arrived. He did not remember which superior officer came first, but he remembered seeing Captain Dennis Walsh early at the scene and then Deputy Chief David McNaughton.

Franko spoke with Detective March on the scene—Franko provided March car numbers and officers' names, but they did not get into the “specifics of the actual events that unfolded.” Franko 6/13/16 OIG Tr. 46:19. Franko also spoke with McNaughton on the scene. McNaughton told Franko to “stand by in case they needed anything.” Franko 6/13/16 OIG Tr. 49:12-13. Franko did not view any video at the scene and no one mentioned seeing video. He recalled that the “in-car camera personnel came to the scene to retrieve video” and that people were surrounding the car that recorded the shooting. Franko 6/13/16 OIG Tr. 50:10-11. Franko assumed they were viewing the video.

When asked if anyone provided him with a narrative of what occurred while he was at the scene, Franko said: “Nobody that was officially part of the investigation or scene. After I was relieved, I took a step back and waited for any instruction or anything from any of the supervisors. The detectives were there. They had the scene, Deputy Chief McNaughton was handling his end of it and other supervisors were there, so I stepped back.” Franko 6/13/16 OIG Tr. 54:14-22. Franko was able to “piece together a narrative as to what transpired” from the “information that was out there.” Franko 6/13/16 OIG Tr. 55:10-12.

Franko had a discussion at the scene with Captain Walsh, McNaughton, and some detectives, about whether McElligott and Gaffney should fill out TRRs and OBRs. It was decided that Gaffney should fill out the forms because he was driving the vehicle McDonald attacked with a knife, and McElligott did not need to fill out the forms because he was outside of the car. Franko did not know who ultimately made the decision, and said he was just asked for input. Franko was not part of any discussion regarding whether Van Dyke or Walsh should fill out TRRs and OBRs. He did not direct the officers to complete TRRs or OBRs at the scene. When asked how the officers were told to complete the forms, Franko said “[t]hey were given direction to do so by superiors, not me.” Franko 6/13/16 OIG Tr. 57:12-13. He later elaborated:

The discussion mainly was trying to figure out whether or not it was—it was a unique situation because the assault that occurred on the vehicle, did it also place Officer Gaffney in danger of receiving a battery. That was what the discussion was about. Nobody could really remember something like this happening where we could say this is how we should handle it. So the discussion was taking place just kind of figuring out if anyone had any idea which way we should go, any prior instances that we could use, and when I left the discussion, there was still no decision made as far as I knew, and generally that would be something that would be finalized at the area when everybody sat down and, you know, talked, the investigators and the bosses about how this was going to be put to paper.”

Franko 6/13/16 OIG Tr. 59:16-60:11.

b) Area Central

At some point after midnight, a supervisor told Franko to go to Area Central. Franko believed he transported Van Dyke to the area. He did not discuss the shooting with Van Dyke—he tried to keep “everything light” and keep Van Dyke “at ease.” Franko 6/13/16 OIG Tr. 71:11-12. When they arrived at Area Central, Van Dyke went into a separate office. Franko remained in the Detective Division main area “basically just waiting for someone to ask me to do something.” Franko 6/13/16 OIG Tr. 73:11-12.

While at Area Central, Franko saw “parts of” the video showing the McDonald shooting. Franko 6/13/16 OIG Tr. 75:21. Franko said, “It was being played in an area where everybody could kind of see it if you wanted to, and I saw parts of the video.” Franko 6/13/16 OIG Tr. 76:4-6. Franko acknowledged that he saw the shooting itself on the video. Franko could not recall who else watched the video.

At some point, McNaughton asked Franko to approve a “General Offense Case Report.” Franko 6/13/16 OIG Tr. 73:21-22. According to Franko, the report contained a narrative that simply said, “See Detective Division Supplemental Report”—Franko explained: “Every incident that takes place gets assigned an RD number, so there needed to be an original case report so that Detective Division could then get assigned the case and do follow-up reports based on—supplemental reports based on the original RD number.” Franko 6/13/16 OIG Tr. 73:22-23, 74:5-10.

McNaughton also asked Franko to review the TRRs that were in the system. Franko said the OBRs are additional reports that are “tied to” the TRRs and explained: “The OBR is a sub-form of the TRR. So you can’t get out of the TRR without going through the OBR, so everything is accepted, and then when you review it and you are complete, it comes out as one report.” Franko 6/13/16 OIG Tr. 82:7, 90:13-17. When asked if his electronic signature on the TRR indicates that he reviewed the accompanying OBR as well, Franko said, “Correct.” Franko 6/13/16 OIG Tr. 90:18-21. Regarding his review, Franko said:

My responsibility is to review the document, make sure that the information on the top is accurate as far as the scene and that type of thing. All I do then is I look and see what the officer’s actions were as I go through the whole document and review it for legibility and completeness, I would then review it and accept it, and then it goes to a supervisor higher than me for approval.

Franko 6/13/16 OIG Tr. 80:5-14. Franko said that, if he had “obvious knowledge that something was not correct” in the forms, he would address the issue. Franko 6/13/16 OIG Tr. 81:18-19. Franko asserted that he was not part of any discussion at Area Central regarding which officers should fill out the TRRs and OBRs, and only learned who filled them out when he went into the system.

Franko denied assisting or consulting with Walsh regarding his TRRs and OBRs. He did not recall “specifically” providing Walsh with RD numbers or the time of the shooting, and said,

“That would be general information that almost anybody out there could have given at that point.” Franko 6/13/16 OIG Tr. 88:4-6. When asked if he knew who instructed Walsh on which boxes to check in the TRR, Franko said: “I don’t know who did. He had legal representation and FOP representation with him at all times.” Franko 6/13/16 OIG Tr. 85:18-20. When asked if he recalled being within 5 to 10 feet of Walsh as he completed his OBR and TRR, Franko said, “At certain points I might have been within that time frame as I am in the room or walking past, but specifically standing over him assisting him, no.” Franko 6/13/16 OIG Tr. 88:10-13. Franko said he saw the video of the shooting before he reviewed Walsh’s report, at 5:07 a.m. With respect to his signature on Walsh’s TRR, Franko stated: “Those boxes were checked. I reviewed it and did not approve the document.” Franko 6/13/16 OIG Tr. 105:24-106:1. Franko believed, at the time he reviewed them, and at the time of his OIG interview, that Walsh’s TRR and OBR were accurate.

Franko denied being present when Van Dyke filled out his TRR and OBR, stating, “No, he was at all points surrounded by his FOP representation, so there was no consulting with me on any of this.” Franko 6/13/16 OIG Tr. 94:11-13. Franko also denied instructing Van Dyke on how to fill out the forms. Franko said he reviewed and approved Van Dyke’s TRR and OBR—he reiterated that he was only reviewing for “legibility and completeness” and it was not his “responsibility to investigate Officer Van Dyke’s actions at that moment.” Franko 6/13/16 OIG Tr. 96:23-24, 98:11-13. With respect to his signature on Van Dyke’s TRR, Franko stated: “I only reviewed. I did not approve anything that night.” Franko 6/13/16 OIG Tr. 104:20-21. He said his signature at the bottom of the report did not indicate he approved it, just that he reviewed the document. Franko believed, at the time he reviewed them, and at the time of his OIG interview, that Van Dyke’s TRR and OBR were accurate.

Franko denied assisting Gaffney with his TRR and OBR. When asked if he supplied any information that Gaffney subsequently entered into the TRR and OBR, Franko said: “To the best of my knowledge, I did not. If he had asked for any general information that was available to everybody at the time, then I would have supplied that to him.” Franko 6/13/16 OIG Tr. 107:4-8.

2. August 2, 2016 Interview

On July 23, 2016, pursuant to Section 6.1 of the CBA between CPD and Unit 156-Sergeants, OIG, through CPD’s Bureau of Internal Affairs, served Franko with a Notification of Interview, Notification of Allegations, and a copy of the Original Case Incident Report.

On August 2, 2016, OIG investigators interviewed Franko under oath after informing him of his administrative advisements orally and in writing. He provided oral and written acknowledgement of the reading of those advisements. The interview was transcribed by a certified court reporter. Franko’s attorney, Thomas Pleines, was also present for the interview. In summary, Franko stated as follows.

a) Original Case Incident Report

Franko explained that an Original Case Incident Report documents “any incident that occurs on the street” and the first responding unit or assigned unit is usually responsible for preparing it. Franko 8/2/16 OIG Tr. 13:12-13. The sergeant assigned to the responding unit approves the report in most cases. Franko could not recall how Fontaine received the assignment to draft the report. Franko said: “I probably spoke to [Fontaine] early on about some preliminary information; but as the night was going on, I had nothing to do with the investigation, so the next time I would have seen it was when I was ordered to approve the case report.” Franko 8/2/16 OIG Tr. 17:23-18:4. Franko acknowledged that he reviewed and approved this report, and that likely occurred at the time the report says he approved it, at 5:18 a.m. When asked if he reviewed and approved the statement that Van Dyke was “injured by offender,” Franko stated:

To be honest with you, I overlooked this. When it was brought to my attention, that was the first time that I saw the box in there.

....

Not being part of the investigation, if I would have seen it, I don’t even know if I would have said anything because I don’t know if he was or was not injured, and there was nothing at that point for me to question anything to whether or not he was.

....

I did not know [whether or not Van Dyke was injured]. I had a very brief conversation with him when it first occurred; and after that, I really had nothing to do with the investigation. So, you know, if he had turned his ankle, anything else would have happened that would have caused injury to him I was not aware of that night.

Franko 8/2/16 OIG Tr. 22:16-23:10. Franko acknowledged that Van Dyke did not indicate he was injured, and he did not receive any indication from anyone else that Van Dyke was injured. He did not direct Fontaine to include that information in the report and did not know why she included that statement. When asked if he stood by that statement, Franko said, “I can’t stand by it because I wasn’t part of the investigation.” Franko 8/2/16 OIG Tr. 25:8-9. Franko did not notice the language until he was served with the July 23, 2016 Notification of Allegations.

b) Review of 813R Dash-Cam Video

OIG investigators presented Franko with Van Dyke’s TRR and OBR and played the dashcam video from 813R. When asked to point out in the video where McDonald attacked Van Dyke with a weapon, Franko stated:

[T]he night of I had very limited information because I wasn't part of the investigation. The video I did see was just from bits and pieces walking around in the office. I didn't see enough of it to have a strong opinion one way or another, and I relied on the investigators that night to make their determination.

....

The night of, I was provided with the same information everyone else was that Lequan [sic] McDonald was attacking, attempting to stab the officers with the knife. So based on everything that was given to me and that was provided to me through the investigators, that was my impression was that he had a knife, he was attacking—or approaching the officers in a threatening way, which would still be an attack, and Officer Van Dyke fired until, you know, the threat was no more.

Franko 8/2/16 OIG Tr. 34:5-12, 35:17-36:3. However, Franko acknowledged seeing the portion of the video where McDonald “was walking and then when the shooting occurred.” Franko 8/2/16 OIG Tr. 24:24-25:1.

Franko stated that his opinion at the time of his OIG interview was that the video does show an “Attack with Weapon.” He said the video shows that, at one point, McDonald was approximately one lane away from Van Dyke and continued to move in a way such that Franko considered McDonald to be an “assailant”—specifically, he stated:

[T]he distance between Van Dyke and the officers, from what I could tell, is probably six feet or less, even though he's walking sideways.

....

He's got a knife in his right hand, and you have Van Dyke with his weapon, looks like it's extended out. It's hard to see with the light, but he's got his weapon in his hand.

....

The way [McDonald is] walking where he's bouncing up and down, not our normal gait. It's the bouncing up and down as he's walking. At that point is he going to bounce left, is he going to bounce right? He's extremely close. Yeah, he's got the weapon out. He's an assailant. He's close enough where if he takes two steps to the left he could be on Van Dyke before Van Dyke even has a chance to do anything about it.

Franko 8/2/16 OIG Tr. 38:14-16, 39:4-8, 39:18-40:3. Franko mentioned that he was taught the “21 foot rule” in the academy, which he described: “[I]f there was an armed offender within 21 feet of us and we did not have our weapon out that there was no way that you could pull that

weapon out, aim it, and fire it in time to stop that offender from attacking us with the knife.”²⁹ Franko 8/2/16 OIG Tr. 41:3-8.

G. Records and Interviews Concerning CPD’s In-Car Video Systems

On October 21, 2014, CPD Sergeant Lance Becvar submitted a supplementary report for R.D. Number HX475653 concerning his retrieval of video from the in-car video systems of the five CPD vehicles that were on scene when Van Dyke shot McDonald.³⁰ In OIG’s June 13, 2016 interview with Franko, he confirmed that three of those vehicles—813R, 815R, and 841R—were under his supervision on October 20, 2014. With respect to 813R, the report stated “video recovered”; with respect to 815R it stated “Operational but due to disc error no video recorded”; as to 841R, the report stated “Not examined – Officer reported application error.”

Becvar also completed a corresponding “In Car Camera Video Retrieval Worksheet” regarding his October 20, 2014 video retrieval.³¹ As to 813R, Becvar stated, “Mics in glove box, batteries inserted upside down, fully op.” As to 815R, Becvar stated, “Processing video: extremely large video file.” As to 841R, Becvar stated, “HDT No Open HDT.”

On July 17, 2015, Becvar sent an email summarizing his findings regarding his October 20, 2014 video retrieval.³² With respect to the vehicles under Franko’s supervision, Becvar stated as follows:

- 813R: “Video Recovered . . . No MICs because they were in the Glove Compartment with the batteries inserted upside down – Disabling them.”³³
- 815R: “System not engaged because a very long video (like hours long) was made previous to this event/incident and the system was processing that video and unable to start another video.”

²⁹ On April 29, 2016, OIG spoke with CPD Deputy Chief Director of Training Keith Calloway. Calloway is familiar with the so-called 21-foot rule, but he stated that it has never been a part of CPD’s training process. Calloway characterized the 21-foot rule as junk science as the theory behind it has never been scientifically proven. See OIG Investigative Report of Call with Keith Calloway.

³⁰ OIG 15-0564 004991.

³¹ OIG 15-0564 004992.

³² OIG 15-0564 000567.

³³ This issue served as the basis for initiating C.R. # 1076186 on July 17, 2015. In the memorandum, Sergeant Soria lists the allegations as “inattention to duty – Violation of Special Order S03-05,” “Possible tampering with In-Car Camera Mics,” and “Improper Use of Equipment.” The summary states, in part: “On 17 July 15, Deputy Chief Lewin was informed via Sgt. Lance Becvar’s email that on 20 Oct 2014, Veh 8779, ‘Video Recovered . . . no mics because they were in the Glove Compartment with the batteries inserted upside down.’” See *supra* Page 4.

- 841R: “System not engaged, officer reported that there was an application error – Mobile Recorder Start-Up corrupted. No Help Desk Ticket Open for this vehicle.”

Franko completed and signed a “Supervisor’s Management Log,” dated October 20, 2014, that corresponded to the shift that began on the evening of October 19, 2014, the day before the shooting.³⁴ Under “Personnel and Assignments,” the log lists the names of Mondragon, Sebastian, Gaffney, McElligott, Fontaine, and Viramontes, as well as their corresponding beat and vehicle numbers. For each of those vehicles, the log has “yes” and “no” boxes to check under “In-Car Camera.” The log also has two additional boxes next to the words “In-Car Camera” that state “Operable & Logged On” and “Inoperable (If Inoperable, give Help Desk Ticket #).” With respect to 813R, 815R, and 841R, Franko did not check either the operable or inoperable boxes.

On October 20, 2014 at 9:38 p.m., 815R sent Franko a PDT message stating, “8489 cam working.”³⁵ Franko then messaged 813R and 841R stating “car & camera” at 9:46 p.m. Both cars responded seconds later—813R messaged “8779 working . . . TGIF :)” and 841R messaged “8948 ticket#10668611.”³⁶

In OIG’s January 27, 2016 interview with Becvar, he stated that placing microphone batteries upside down was “a known way to get around . . . the microphones.” Becvar OIG Tr. 52:18-19. According to Becvar, it is not proper for officers to keep microphones in their vehicle’s glove compartment. Rather, “[t]hey should be with the batteries inserted properly in the charger and . . . [on] the officer once they started their tour.” Becvar OIG Tr. 56:2-4. Becvar added, with respect to in-car video systems, “It’s up to the district to watch for disciplinary issues.” Becvar OIG Tr. 53:3-4.

In their respective OIG interviews, Mondragon and Sebastian, who were assigned to 813R on October 20, 2014, each acknowledged that they did not check the audio function of 813R’s in-car video system at the start of their October 20, 2014 tour. Mondragon and Sebastian further acknowledged that at that time, it was not their practice to ever check the audio function of their vehicle’s in-car video system at the beginning of their tour. Mondragon OIG Tr. 158:11-159:10; Sebastian OIG Tr. 158:7-24, 166:20-24, 170:23-171:12. Similarly, McElligott and Gaffney, who were assigned to 815R on October 20, 2014, each said that it was not their regular practice at that

³⁴ OIG 15-0564 000151-52. OIG attempted to obtain Franko’s October 21, 2014 supervisor’s log before his interview, but CPD informed OIG that the log had been destroyed prior to the commencement of OIG’s investigation.

³⁵ See OEMC PDT Messages. OIG 15-0564 000171.

³⁶ According to records obtained from CPD, the ticket number corresponds to Help Desk Ticket #INCGB0010668611, which was submitted by a Sgt. Jerome Hoffman on October 12, 2014. The ticket was recorded as relating to Vehicle 8984, and having to do with an in-car video issue. The description of the problem states “no power.” On November 7, 2014, the Help Desk Ticket was closed. The resolution notes read “no such car number in 8.” Accordingly, OIG finds that there is an insufficient basis to conclude that the 841R officers violated CPD Special Order S03-05 by failing to ensure that their in-car video system was working properly on October 20, 2014.

time to check the audio function of their vehicle's in-car video system at the beginning of their tour. McElligott OIG Tr. 125:13-127:11; Gaffney OIG Tr. 92:12-95:6.

In his June 13, 2016 OIG interview, Franko said his responsibility was to "make sure that the cameras were functioning in each of the cars that were assigned to me that evening." Franko 6/13/16 OIG Tr. 119:24-120:2. Franko did this by checking in with his officers—he "would manually be able to observe whether or not the camera was functioning." Franko 6/13/16 OIG Tr. 120:20-21. He also could receive messages from his subordinates if the video was not functioning. When asked how he ensured audio was functioning, Franko said: "[T]here was no way for us to check. The officers if they didn't make a stop the entire tour, I would not know whether or not audio was working correctly on the system." Franko 6/13/16 OIG Tr. 132:17-20. When asked who was ultimately responsible for ensuring that the in-car video systems were properly capturing audio and video, Franko responded, "The officers." Franko 6/13/16 OIG Tr. 148:5. Franko added:

I can only report on what I know. I do what I need to and check, and if I don't have the information from the officers, then I can't fix things that we don't know about, and then from there, you know, it goes up the system, you know, up the ladder as far as getting things fixed, whether it is through the help desk and the in-car camera people, or I don't know if there is somebody in each district that it is their job to come back and check on the data and the audio.

That wasn't something that I did, but I don't think it just stopped at me. You know, I checked on what I was able to check on by, you know making contact with the officers.

Franko 6/13/16 OIG Tr. 148:9-23.

With respect to the unchecked operable/inoperable boxes on the October 20, 2014 Supervisor's Management Log, Franko admitted: "I just failed to check the box." Franko 6/13/16 OIG Tr. 126:23-24. When asked whether he generally checked those boxes, Franko said: "Generally, I do. There is a lot of times where I miss something, you know, working midnights and not always checking everything. You know, you kind of assume that if there is something missing, one of the three signatures after you is going to catch it and kick it back." Franko 6/13/16 OIG Tr. 155:1-7.³⁷ Franko acknowledged that he should have checked at least one of the boxes relating to the in-car video system's operability.

Franko was not able to explain why there was no audio in any of the vehicles present at the McDonald shooting. He said: "I don't know for that particular evening what had occurred. I was not notified of anything as far as these particular vehicles, and it was still early in the night, so I don't know if I made contact with the officers or not." Franko 6/13/16 OIG Tr. 136:9-13. When asked what he did when he found out that 815R and 841R did not capture audio or video on October 20, 2014, and 813R did not capture audio, Franko responded: "Well, at this point

³⁷ The October 20, 2014 Supervisor's Management Log was also signed by a Field Lieutenant, Watch Commander, and District Commander.

with the retrieval worksheet done, and common knowledge to my supervisors, it was left in their hands to follow-up on it from there. It was already reported.” Franko 6/13/16 OIG Tr. 154:8-12.

V. ANALYSIS

The OIG investigation established that Franko violated CPD Rules and Regulations and CPD Directives when he reviewed and approved false TRRs and false OBRs submitted by Van Dyke and Walsh regarding the events that culminated in Van Dyke’s shooting of McDonald. Franko’s endorsement of those false statements served to establish the false narrative that McDonald initiated an attack on Van Dyke and Walsh. In addition, Franko approved an Original Case Incident Report submitted by Fontaine that inaccurately stated Van Dyke was injured by McDonald. Finally, Franko failed to take appropriate action when he became aware that the officers under his supervision did not capture audio in their vehicles’ in-car video systems. Throughout Franko’s OIG interview, he attempted to deny or minimize his role on the scene and at Area Central. His denial is not credible in light of multiple witnesses stating they believed Franko was involved in the creation of the TRRs and OBRs.

Franko’s actions, individually and collectively, constitute violations of CPD Rules and Directives. His review and approval of TRRs and OBRs containing false statements made by Van Dyke and Walsh constitute violations of Rule 14 (making a false report, written or oral). As a CPD supervisory member, Franko is responsible for the performance of those officers, and is ultimately accountable for their “failure, misconduct or omission.” *See* Rules and Regulations of the Chicago Police Department, Section IV.B.8. Franko’s actions, including his approval of the inaccurate Original Case Incident Report and his failure to take action regarding the in-car camera system audio, also constitute violations of Rule 2 (engaging in any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department), Rule 3 (failing to promote the Department’s efforts to implement its policy and accomplish its goals), and Rule 6 (disobedience of an order, namely S03-03-06 and S03-05). A supervisory member who has made, reviewed, or approved false statements in an official investigation has irrevocably tainted not only his credibility, but also the credibility of CPD—and also fails to promote CPD’s goal of employing officers with personal integrity and professional devotion to law enforcement. Finally, Franko violated S03-03-06, which specifically lists his responsibilities as a sergeant, when he failed to (1) monitor the behavior and performance of his subordinates, (2) take appropriate action when deficiencies in performance, uniform, and/or equipment were observed, and (3) ensure TRRs were properly completed. By violating these Rules and Directives, Franko further violated Rule 11 (incompetency in the performance of a duty). Accordingly, OIG recommends that CPD discharge Franko and refer him for placement on the ineligible for rehire list maintained by the Department of Human Resources.

1. Franko’s Review and Approval of TRRs and OBRs

Van Dyke and Walsh both asserted false narratives of the McDonald shooting in the official CPD reports they submitted regarding their encounter with McDonald. In their TRRs, Van Dyke and Walsh falsely claimed that McDonald (1) used force likely to cause death or great bodily

harm, (2) attacked them with a weapon, and (3) created an imminent threat of battery. In their OBRs, Van Dyke and Walsh falsely claimed that the manner of attack was a stab or a cut (including actual attempt).

As detailed in the Summary of Relevant Video Footage, Section IV.B.3., at no time while Van Dyke and Walsh were out of their vehicle and proximate to McDonald did McDonald attack or swing his knife to cause death or great bodily harm. By the time Van Dyke and Walsh exited their vehicle, McDonald was walking in a southwest direction away from Van Dyke and Walsh, who at all times prior to the shooting were east of McDonald. Thus, at no time during the encounter between McDonald and Walsh and Van Dyke did McDonald advance toward the two officers. Rather, it was the officers who moved northward or west/southwestward, toward McDonald, as he continued to walk in a southwest direction. Further, seconds prior to the shooting, McDonald moved the knife from his right hip to the right side of his lower back, but this modest movement of the knife was not in the direction of Walsh and Van Dyke—Walsh and Van Dyke were in front of McDonald and to his left, and McDonald moved his knife behind his back, not in front of his body.

Franko acknowledged that he saw the relevant portions of the video before reviewing and approving the TRRs and OBRs containing false statements. Thus, he was aware that the statements he was reviewing in the TRRs and OBRs were false. His review and approval of false statements materially served to exaggerate the threat McDonald posed.

Throughout Franko's OIG interview, he attempted to minimize and deny his involvement in the creation of TRRs and OBRs. He denied assisting or consulting with Van Dyke and Walsh regarding their TRRs and OBRs, stressed that he only reviewed the documents for "legibility and completeness," and insisted his role was not to approve the forms, despite his signature on the documents. Franko's attempts to minimize his role is countered by CPD Special Order S03-03-06 requiring that he "direct and supervise the investigation" for "events requiring the completion and approval of Tactical Response Reports," and that he "ensure TRRs are properly completed and forwarded for approval." Regardless of what importance Franko might ascribe to his role, CPD created a provision in its Special Orders specifically describing his responsibilities otherwise. Franko's denials are also contradicted by witness statements describing Franko's role—Walsh and Gaffney both believed they consulted with Franko regarding their forms, McElligott recalled Franko telling him not to fill out a TRR and OBR, and McNaughton believed Franko assisted the officers in completing the forms.

2. Franko's Review and Approval of the Original Case Incident Report

Franko also violated CPD Rule 11 (incompetency in the performance of a duty) when he negligently approved the Original Case Incident Report, which incorrectly states Van Dyke was "Injured by offender." Franko stated that he overlooked this language. He attempted to offer an excuse that Van Dyke may have been injured, providing the example that Van Dyke could have turned his ankle. However, at no time during Franko's conversation with Van Dyke on the scene and on their drive to Area Central did Van Dyke indicate he was injured, and no other individual told Franko that Van Dyke was injured. As a supervisor, it was Franko's responsibility to ensure

the accuracy of this report. His endorsement of a material, inaccurate statement in a CPD report furthered the false narrative that McDonald initiated an attack on Van Dyke and Walsh. Franko's failure to scrutinize this report before approving it demonstrates incompetency in his duties as a sergeant.

3. Franko's Failure to Ensure Working Audio

Finally, Franko violated CPD Rule 6 (disobedience of an order) and CPD Rule 11 (incompetency in the performance of a duty) by failing to take appropriate action when he became aware that the officers under his supervision did not capture audio in their vehicles' in-car video systems. Specifically, Franko failed to (1) monitor his subordinates to ensure they maintained a practice of using audio, (2) initiate an investigation when notified of a missing or lost remote transmitter/audio recorder, and (3) maintain an accurate Supervisor's Management Log, as required by CPD Special Order S03-05.

The 813R and 815R officers, who were under Franko's supervision on October 20, 2014, all stated that it was not their practice to check the audio function of their in-car camera system prior to the start of their tour, despite it being a requirement in CPD Special Order S03-05. They also acknowledged that the audio component of their vehicle's in-car video systems was not working on October 20, 2014. While Franko acknowledged it was his responsibility to ensure the video systems were working, he once again denied and minimized his role as a supervising sergeant, stating that there was "no way" for him to check audio in the vehicles he supervised. However, the CPD Special Orders put the front-line responsibility for monitoring subordinates to ensure they maintained a regular practice of using audio on the supervising sergeant. Indeed, Franko's subordinates' acknowledgement of a more general practice of not checking the audio function of their in-car camera systems as required by Special Order S03-05 highlights precisely why the responsibility for "monitoring behavior and performance of subordinates and their adherence to Department policies and procedures and taking appropriate action when deficiencies in performance, uniform, and/or equipment are observed" is most critically and expressly placed on field sergeants—CPD's first line supervisors—pursuant to Special Order S03-03-06. The passage of individual instances of noncompliance into routine practice is facilitated by the failure of line supervisors to inhabit their expressly assigned responsibilities, as is suggested by Franko's inaction and attitude toward his duties here.

Further, the CPD Special Orders specifically state it is the sergeant's responsibility to initiate an investigation when notified of missing or lost remote transmitters or audio recorders. When asked what he did when he found out that 815R and 841R did not capture audio or video on October 20, 2014, and 813R did not capture audio, Franko responded: "Well, at this point with the retrieval worksheet done, and common knowledge to my supervisors, it was left in their hands to follow-up on it from there. It was already reported." Franko 6/13/16 OIG Tr. 154:8-12. Franko's attempts to once again evade his responsibilities are unsuccessful in light of CPD Special Orders S03-03-06 and S03-05 specifically stating that it is Franko's duty to initiate an investigation when notified of missing or lost remote transmitters or audio recorders and Becvar's statement that it was "up to the district to watch for disciplinary issues."

In addition, Franko's cavalier attitude toward his supervisory responsibilities is further reflected in his failure to properly complete his October 20, 2014 Supervisor's Management Log. These logs required him to determine, on a daily basis, whether each vehicle under his supervision had an operable in-car video system. Franko acknowledged that he failed to check any of the boxes related to the operability of the 813R, 815R, and 841R vehicles' in-car video systems on the October 20, 2014 Log. When asked about this failure, Franko stated: "There is a lot of times where I miss something, you know, working midnights and not always checking everything. You know, you kind of assume that if there is something missing, one of the three signatures after you is going to catch it and kick it back." Franko 6/13/16 OIG Tr. 155:1-7. Franko's response suggests the operation of a lower standard of care and responsibility for first watch supervisors and that lesser attention to detail is acceptable because someone up the chain can attend to it. It is also reflective of Franko's pervasive substandard attention to duty and of a broader abdication of his supervisory responsibilities throughout the events that culminated in Van Dyke's shooting of McDonald and CPD's investigation of those events.

VI. RECOMMENDATION

Franko's actions raise significant concerns regarding his credibility and ability to perform his duties as a sworn officer and supervisory member. As a sworn officer and supervisory member, Franko's reports are relied upon in criminal legal proceedings and his credibility is therefore critical to his position. A CPD member who has made false statements in an official investigation has irrevocably tainted his credibility and has wholly disqualified himself from effectively executing core police functions. Based on this conduct he may be the subject of cross-examination in any contested proceedings in which he may appear as a witness, *see FED. R. EVID. 608(b)* ("Specific instances of conduct"), and his conduct and the findings resulting from this investigation would further qualify as impeachment material that should, in principle, be disclosed in any contested proceeding involving the official records or testimony Franko generates. *See Giglio v. United States*, 405 U.S. 150 (1972) (requiring disclosure in criminal case of information impeaching of government witness's credibility). Illinois courts have repeatedly noted that "as the guardians of our laws, police officers are expected to act with integrity, honesty, and trustworthiness" and have found intentional false or misleading statements by police officers to be sufficient cause for termination. *Rodriguez v. Weis*, 408 Ill. App. 3d 663, 671 (1st Dist. 2011) (quoting *Sindermann v. Civil Service Comm'n*, 275 Ill. App. 3d 917, 928 (2nd Dist. 1995)). OIG therefore recommends that CPD discharge Franko and refer him for placement on the ineligible for rehire list maintained by the Department of Human Resources.

VII. CPD RULE VIOLATIONS

- | | |
|---------------|---|
| Rule 2 | Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department. |
| Rule 3 | Any failure to promote the Department's efforts to implement its policy or accomplish its goals. |
| Rule 6 | Disobedience of an order or directive, whether written or oral. |

Rule 11 Incompetency or inefficiency in the performance of duty.

Rule 14 Making a false report, written or oral.

Appendix A





